

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

08 CV 00030  
X

LINDA SCHAEFER,

Plaintiff,

-against -

PATHMARK STORES, INC.,

Defendant.

**NOTICE OF REMOVAL**

CV



TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN AND SOUTHERN DISTRICT OF NEW YORK

This Notice of Removal on behalf of defendant respectfully shows:

1. An action was commenced against defendant in the Supreme Court of the State of New York, Bronx County on July 6, 2007 with subsequent service on the defendant through the Secretary of State on July 24, 2007, which action is entitled above. According to the Complaint, plaintiff demands judgment in an amount which "exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction." Copies of the Summons and Complaint are attached hereto and marked as

***Exhibit "A".***

2. Defendant timely interposed its answer to the Complaint. A copy of the Answer is annexed as ***Exhibit "B".***

3. On August 15, 2007 defendant served a CPLR §3017(c) "Request for a Supplemental Demand" requiring plaintiff to set forth the total damages to which

he deems himself entitled. A copy of the "Request for Supplemental Demand" is annexed as ***Exhibit "C"***.

4. In response by letter dated December 28, 2007 plaintiff demands judgment against the defendant in the amount of \$750,000.00 ***Exhibit "D"***.

5. The above described action is now one in which this Court has original jurisdiction under the provisions of 28 U.S.C. 1332 and is one which may be removed to this Court by petitioner, pursuant to the provisions of 28 U.S.C. 1441 in that the matter in controversy exceeds the jurisdictional minimum for federal diversity actions exclusive of interest and costs.

6. Plaintiff was, at the time this action was commenced, and still is, a citizen of the State of New York and resides in Bronx County. Defendant, was, at the time this action was commenced, and still is, a corporation organized under the laws of the State of Delaware and having its principal place of business in the State of New Jersey.

***WHEREFORE***, defendant requests that the action now pending against it in the Supreme Court of the State of New York, Bronx County, be removed therefrom to this Court.

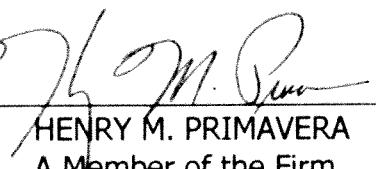
Dated: New York, New York  
January 3, 2008

Yours etc.,

KRAL, CLERKIN, REDMOND, RYAN,  
PERRY & GIRVAN

Attorneys for Defendant  
Office & P.O. Address  
69 East Jericho Turnpike  
Mineola, New York 11501  
516-742-3470

BY:

  
HENRY M. PRIMAVERA  
A Member of the Firm

TO: VOZZA & HUGUENOT  
Attorneys for Plaintiff  
2435 Eastchester Road  
Bronx, New York 10469  
718-654-3330

**ATTORNEY'S AFFIRMATION**

STATE OF NEW YORK)  
ss:  
COUNTY OF NASSAU )

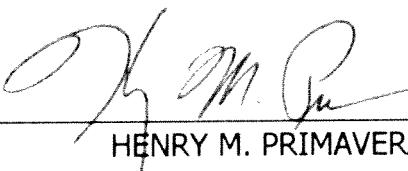
I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, the attorneys of record for the defendant PATHMARK STORES, INC. in the within action;

I have read the foregoing NOTICE OF REMOVAL and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York  
January 3, 2008

  
HENRY M. PRIMAVERA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

LINDA SCHAEFER,

Plaintiff,

CV 07

-against-

AFFIDAVIT OF  
SERVICE

PATHMARK STORES, INC.,

Defendant.

-----X

STATE OF NEW YORK )

) ss.:

COUNTY OF NASSAU )

LORETTA GRECO, being duly sworn, deposes and says:

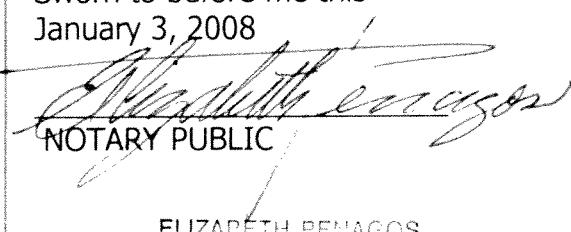
That your deponent is not a party to the action and is over the age of 18 years and on January 3, 2008 deponent served the within NOTICE OF REMOVAL upon the attorneys for the respective parties to this action as follows:

TO: VOZZA & HUGUENOT  
Attorneys for Plaintiff  
2435 Eastchester Road  
Bronx, New York 10469  
718-654-3330

the addresses designated by said attorneys for that purpose by dispatching a true copy thereof enclosed in a properly addressed wrapper into the custody of Federal Express for overnight delivery service, prior to the latest time designated by that service for overnight.

  
LORETTA GRECO

Sworn to before me this  
January 3, 2008

  
NOTARY PUBLIC

ELIZABETH PENAGOS  
Notary Public, State of New York  
No. 0171-01163  
Qualified in Nassau County  
Commission Expires Oct. 30, 2009

LINDA SCHAEFER,

Plaintiff,

-against-

PATHMARK STORES, INC.,

Defendant.

### NOTICE OF REMOVAL

KRAL, CLERKIN, REDMOND, RYAN  
PATHMARK  
PERRY & GIRVAN, LLP

Attorneys for

69 EAST JERICHO TURNPIKE  
MINEOLA, NEW YORK 11501  
(516) 742-3470

§2103 (b) (5) Notice: Service of Papers by Electronic Means is Not Accepted

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: .....

Signature .....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

.....  
Attorney(s) for

### PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY that the within is a (certified) true copy of a entered in the office of the clerk of the within-named Court on 20

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon. , one of the judges of the within-named Court, at on 20 , at M.

Dated:

KRAL, CLERKIN, REDMOND, RYAN  
PERRY & GIRVAN, LLP

Attorneys for

To:

69 EAST JERICHO TURNPIKE  
MINEOLA, NEW YORK 11501

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Docket # 1737867  
Filed  
1/13/07

LINDA SCHAEFER,

Plaintiffs,  
against

Plaintiff designates  
Bronx County  
as the place for trial

PATHMARK STORES, INC.,

Secretary of State

**SUMMONS**

Plaintiff resides at  
50 Westchester Ave  
County of Bronx

Defendants

To The Above Named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in the above action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally served to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York  
July 6, 2007

  
F. FRANK VOZZA  
VOZZA & HUGUENOT, ESQS.  
Attorneys for Plaintiff  
2435 Eastchester Road  
Bronx, New York 10469  
(718) 654-3330

Defendants' Addresses:

PATHMARK STORES, INC., 1720 Eastchester Road, Bronx, New York 10461

**INDIVIDUAL VERIFICATION**

STATE OF NEW YORK)  
COUNTY OF BRONX ) ss.:

The undersigned, being duly sworn deposes and says that deponent is a plaintiff in the within action; that deponent has read the foregoing SUMMONS AND COMPLAINT and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

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LINDA SCHAEFER

Sworn to before me  
on July 6, 2007

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Notary Public

ATTORNEY VERIFICATION

The undersigned, an attorney admitted to practice in the State of New York, affirms:

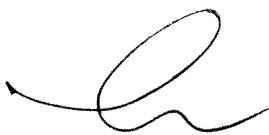
That I am the attorney of record for the plaintiff in the within action; that the undersigned has read the foregoing and knows the contents thereof; that the same are true from the affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief; and as to those matters affirmant believes them to be true.

The undersigned further states that the reason this affirmation is made by the undersigned and not by our client is that the plaintiff is presently not within the county where your affirmant maintains his office.

The grounds of affirmant's belief as to all matters not stated to be upon affirmant's knowledge, are based on materials contained in the office file.

The undersigned affirms that the foregoing statements are true, under the penalty of perjury.

Dated: Bronx, New York  
July 6, 2007



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F. FRANK VOZZA, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

---

LINDA SCHAEFER,

Plaintiffs,

- against -

PATHMARK STORES, INC.,

Defendants.

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SUMMONS AND COMPLAINT

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VOZZA & HUGUENOT, ESQS  
Attorneys for Plaintiff  
Office & P.O. Address  
2435 Eastchester Road  
Bronx, New York 10469  
(718) 654-3330

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Dated: Bronx, New York  
July 6, 2007

---

TO: PATHMARK STORES, INC., 1720 Eastchester Road, Bronx, New York 10461

RECEIVED

JUL 31 2007

NYX MANAGEMENT

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SUPREME COURT  
COUNTY OF BRONX

---

LINDA SCHAEFER,

Plaintiffs,

- against -

VERIFIED  
COMPLAINT

PATHMARK STORES, INC.,

Defendants.

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Plaintiff, complaining of the defendants, by her attorneys, VOZZA & HUGUENOT, ESQS., respectfully submits and alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION  
ON BEHALF OF PLAINTIFF,

1. That at all times hereinafter mentioned, the plaintiff was and still is a resident of Bronx County.
2. That at all times hereinafter mentioned, and upon information and belief, the defendant, PATHMARK STORES, INC. is a **domestic corporation** or in the alternative is a corporation authorized to do business in the State of New York.
3. That at all times hereinafter mentioned, the defendant, PATHMARK STORES, INC., its agents, servants and/or employees **owned**, the building and/or premises known as 1720 Eastchester Road, Bronx, New York 10461.
  - a. That at all times hereinafter mentioned, the defendant, hereinbefore mentioned its agents, servants and/or employees **operated** said building and/or premises.
  - b. That at all times hereinafter mentioned, the defendant, hereinbefore mentioned its agents, servants and/or employees **managed** said building and/or premises.

c. That at all times hereinafter mentioned, the defendant, hereinbefore mentioned its agents, servants and/or employees **maintained** said building and/or premises.

d. That at all times hereinafter mentioned, the defendant, hereinbefore mentioned its agents, servants and/or employees **controlled** said building and/or premises.

e. That at all times hereinafter mentioned, the defendant, hereinbefore mentioned its agents, servants and/or employees **supervised** said building and/or premises.

4. That it was the duty of said defendants to maintain said building and/or premises in good repair and free from hazard, defect and danger so that all persons might travel over, or occupy and use, same in safety.

5. That on or about July 4, 2006 while plaintiff was lawfully and legally on said building and/or premises of the defendants, plaintiff was caused to sustain serious and severe personal injuries due to the carelessness, recklessness and negligence of the defendants, its agents, servants, and or employees.

6. That at the aforestated time and place while the plaintiff was lawfully on/at the premises abovementioned, the defendant, its agents, servants, and or employees caused, created, suffered, permitted and allowed the premises to be in an unsafe, dangerous, defective, hazardous and trap-like condition and allowed said condition to remain for a long and unreasonable length of time; that the defendant failed to maintain, operate and control said premises in a safe and proper manner; that the defendants failed to give any

warning of any kind to the plaintiff that said condition did in fact exist and defendant was otherwise careless and negligent.

7. That the defendants, its agents, servants and/or employees knew or by the exercise of reasonable care should have known that said unsafe, hazardous, dangerous and trap-like condition existed and in fact existed for a long and unreasonable length of time.

8. That the aforementioned occurrence was caused solely as a result of the negligence of the defendants, without any negligence on the part of the plaintiff contributing thereto.

9. That solely as a result of the foregoing, plaintiff, LINDA SCHAEFER, sustained serious, severe and personal injuries, has suffered loss of enjoyment of life and has been otherwise damaged.

10. That the aforesaid injuries were sustained as a result of the carelessness, recklessness and negligence of defendants without any culpable conduct on the part of the plaintiff contributing thereto.

11. That plaintiffs plead one or more exceptions under Article 16 of the CPLR.

12. That solely as a result of the negligence of the defendants as aforesaid, plaintiff, LINDA SCHAEFER was caused to sustain serious, severe and permanent injuries.

13. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**WHEREFORE**, plaintiff demands judgment against defendant in an amount to be determined upon the trial of this action, together with the costs and disbursements of this action.

Dated: Bronx, New York  
July 6, 2007



F. FRANK VOZZA

VOZZA & HUGUENOT, ESQS.  
Attorneys for Plaintiff  
2435 Eastchester Road  
Bronx, New York 10469  
(718) 654-3330

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

=====X

LINDA SCHAEFER,

Plaintiff,

Index #17378/07

-against-

**VERIFIED ANSWER**

PATHMARK STORES, INC.,

Defendant.

=====X

Defendant, PATHMARK STORES, INC., by its attorneys, KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, answering the Complaint of the plaintiff, sets forth upon information and belief the following:

FIRST: Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the Complaint.

SECOND: Defendant denies each and every allegation contained in paragraph "2" of the Complaint except admits that PATHMARK STORES, INC. is a corporation authorized to do business in the State of New York.

THIRD: Defendant denies each and every allegation contained in paragraphs "3", "5", "6", "7", "8", "9", "10", "11", "12" and "13" of the Complaint.

FOURTH: Defendant denies each and every allegation contained in paragraph "3a" of the Complaint except admits that the defendant operated a "Pathmark" supermarket.

FIFTH: Defendant denies each and every allegation contained in paragraph "3b" of the Complaint except admits that the defendant managed a "Pathmark" supermarket.

SIXTH: Defendant denies each and every allegation contained in paragraph "3c" of the Complaint except admits that the defendant maintained a "Pathmark" supermarket.

SEVENTH: Defendant denies each and every allegation contained in paragraph "3d" of the Complaint except admits that the defendant controlled a "Pathmark" supermarket.

EIGHTH: Defendant denies each and every allegation contained in paragraph "3e" of the Complaint except admits that the defendant supervised a "Pathmark" supermarket.

NINTH: Defendant denies each and every allegation contained in paragraph "4" of the Complaint in the form alleged and respectfully refers all questions of law to the determination of the court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

TENTH: Upon information and belief, the injuries sustained by plaintiff and any alleged damages were caused in whole or in part, or were contributed to by reason of the negligence, want of care, carelessness, assumption or risk, or other culpable conduct on the part of the plaintiff and by reason of the foregoing, the damages allegedly attributable or otherwise recoverable herein should be reduced proportionately.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

ELEVENTH: That the plaintiff could, with due diligence, have obtained personal jurisdiction over tortfeasors not a party to this lawsuit. Therefore, the culpability of these missing or absent tortfeasors may be computed into the apportionment of total culpability causing the subject occurrence.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

TWELFTH: These answering defendants' equitable shares of the total liability assigned to all persons liable, if any, if fifty percent (50%) or less.

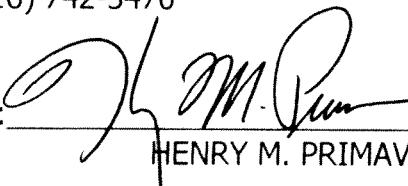
**WHEREFORE**, the defendant PATHMARK STORES, INC. demand judgment dismissing plaintiff's Verified Complaint together with the costs and disbursements of this action.

Dated: Mineola, New York  
August 15, 2007

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,  
PERRY & GIRVAN, LLP  
Attorneys for Defendant  
PATHMARK STORES, INC.  
Office & P.O. Address  
69 East Jericho Turnpike  
Mineola, New York 11501  
(516) 742-3470

BY:



HENRY M. PRIMAVERA

TO: VOZZA & HUGENOT, ESQS.  
Attorneys for Plaintiff  
2435 Eastchester Road  
Bronx, New York 10469  
(718) 654-3330

STATE OF NEW YORK)

SS:

COUNTY OF NASSAU )

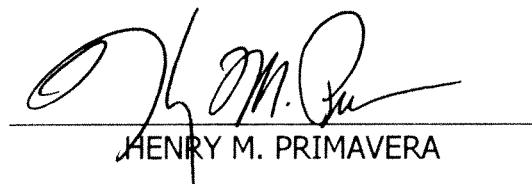
I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, LLP, the attorneys of record for the defendant PATHMARK STORES, INC. in the within action;

I have read the foregoing Answer to Verified Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York  
August 15, 2007



---

HENRY M. PRIMAVERA

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X

LINDA SCHAEFER,

Index #17378/07

Plaintiff,

-against-

PATHMARK STORES, INC.,

Defendant.

**CPLR Section 3017(c)  
REQUEST FOR A  
SUPPLEMENTAL DEMAND**

COUNSELORS:

PLEASE TAKE NOTICE, that pursuant to CPLR Section 3017(c) defendant, PATHMARK STORES, INC., hereby demand that within fifteen (15) days plaintiff, LINDA SCHAEFER, provide a Supplemental Demand setting forth the total damages to which plaintiff deems herself entitled.

PLEASE TAKE FURTHER NOTICE, that in the event the Supplemental Demand is not served within fifteen (15) days of this request, defendant shall move for an Order requiring plaintiff's compliance.

Dated: Mineola, New York  
August 15, 2007

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,  
PERRY & GIRVAN, LLP

Attorneys for Defendant

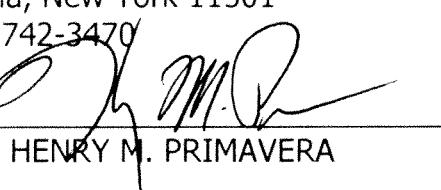
Office & P.O. Address

69 East Jericho Turnpike

Mineola, New York 11501

(516) 742-3470

BY:

  
HENRY M. PRIMAVERA

TO: VOZZA & HUGUENOT, ESQS.

Attorneys for Plaintiff

2435 Eastchester Road

Bronx, New York 10469

(718) 654-3330

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
LINDA SCHAEFER,

Plaintiff,

Index #17378/07

-against-

PATHMARK STORES, INC.,

Defendants.

-----X  
**Affidavit of Service**

STATE OF NEW YORK )  
                        ) ss.:  
COUNTY OF NASSAU )

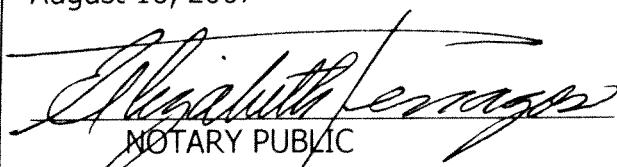
LORETTA GRECO, being duly sworn, deposes and says: That your deponent is not a party to the action and is over the age of 18 years old and on August 16, 2007 served the within VERIFIED ANSWER, DEMAND FOR A VERIFIED BILL OF PARTICULARS, COMBINED DEMAND, NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION AND SUPPLEMENTAL DEMAND upon the attorneys for the respective parties to this action as follows:

TO: VOZZA & HUGUENOT, ESQS.  
Attorneys for Plaintiff  
2435 Eastchester Road  
Bronx, New York 10469  
718-654-3330

the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
LORETTA GRECO

Sworn to before me this  
August 16, 2007

  
NOTARY PUBLIC  
ELIZABETH PENAGOS  
Notary Public, State of New York  
No. 01PE051168  
Qualified in Nassau County  
Commission Expires Oct. 30, 2009

**Vozza & Huguenot  
Attorneys At Law**



**F. Frank Vozza  
Michael Z. Huguenot**

**2435 Eastchester Road  
Bronx, New York 10469  
(718) 654-3330  
FAX: (718) 654-1374  
[www.accidentcash.com](http://www.accidentcash.com)**

December 28, 2007

Kral Clerkin Redmond Ryan  
Perry & Girvan, LLP  
69 East Jericho Turnpike  
Mineola, New York 11501

Attention: Henry M. Primevera, Esq.

Re: SCHAEFER V. PATHMARK STORES, INC.  
Date of Accident: July 4, 2006  
Your File No.: 901838

Dear Mr. Primevera:

In response to your prior request, be advised that we hereby make a demand in the sum of \$750,000.00 in this case.

Thank you for your attention herein.

Very truly yours,

VOZZA & HUGUENOT, ESQS.

BY: F. FRANK VOZZA  
/wjo